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Official Records  
County of Solano  
Robert Blechschmidt  
Assessor/Recorder

Recording Requested By:

Barbara J. Cook, P.E., Chief,  
Site Mitigation Branch

08:00 25-AUG-94 AR03 14 Pgs

When Recorded, Mail to:

California Department of Toxic Substances Control, Region 2  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

Attention: Barbara J. Cook, P.E., Chief,  
Site Mitigation Branch

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY

Repository Area Located on Parcel 2-4A

Benicia, California

This Covenant and Agreement ("Covenant") is made on the 19  
day of August, 1994, between the State of California Department of  
Toxics Substances Control (the "Department") and Shareholder Properties, Ltd., a  
California limited partnership ("Covenantor"), which is the owner of certain property  
commonly known as Parcel 2-4A and situated in the City of Benicia, County of  
Solano, State of California, as described in Exhibit A attached hereto and  
incorporated herein by this reference, and as shown on Exhibit B attached hereto and  
incorporated herein by this reference ("the Property"), with reference to the following  
facts:

1                   A.    Description of Facts.

2                   A.1.   Burial of Treated Soils. A portion of the Property is the  
3 repository of approximately 10,000 cubic yards of treated soils containing residues  
4 of lead-bearing materials which have been physically and chemically stabilized with  
5 silicate based reagents pursuant to an approved Site Remediation and Grading Plan  
6 prepared in 1990. The "Repository Area" is described in Exhibit C and shown on  
7 Exhibit B. The average total lead concentration in the treated soils at the Repository  
8 Area is approximately 1,200 parts per million. The average soluble lead  
9 concentration in the treated soils is approximately 2.9 parts per million using the  
10 California Waste Extraction Test. The treated soils at the Repository Area have been  
11 formed into cement-like blocks or cells and deposited in a repository of approximately  
12 40,000 square feet by nine feet in depth and covered with the following (herein  
13 collectively referred to as the "Cap"): two feet of compacted clay sufficient to meet  
14 a permeability of  $1 \times 10^{-6}$  cm/sec., six inches of aggregate base and six inches of  
15 reinforced concrete.

16                   A.2   Adjacent Land Uses and Population Potentially Affected.

17 Hillcrest Avenue east of Second Street in Benicia (located within 0.6 miles) contains  
18 the closest residence to the Property. The Robert Semple Elementary School,  
19 located one mile from the property at 2015 East Third Street, Benicia, is the closest  
20 school. No hospital is located within a one mile radius of the Property.

21                   A.3   Exposure Pathways. If the treated soils should become  
22 uncovered and if the physical and chemical stabilization of the treated soils should  
23 fail, exposure to the treated soils may occur via dermal contact, surface-water  
24 runoff, wind dispersal, or migration to the groundwater resulting in dermal contact,  
25 inhalation, or ingestion by humans. Lead (Pb) is absorbed following ingestion,  
26 inhalation or dermal contact. Lead poisoning in children is characterized by  
27 occasional vomiting, irritability, abdominal pain, vomiting, convulsions and coma.  
28 With chronic, low-level exposure to lead, learning deficits in young children may be

1 the only measurable effect of lead intoxication. In older children and adults, the  
2 effects of lead may be more subtle and nonspecific with decreased fertility and  
3 fatigue as the only signs. Lead has been reported to cause birth defects in animals.  
4 Potential health effects of lead include anemia, blood dysplasia, gastrointestinal  
5 disorders, lead line gums, and damage to the liver, kidney, male gonads, central and  
6 other nervous systems, blood vessels, and brain, and may cause convulsions and  
7 permanent brain damage. The risk of public exposure to the contaminants has been  
8 minimized by reduction of the lead levels in the soil, physical and chemical  
9 stabilization of the lead-bearing soils, encapsulation of the treated soils, and placing  
10 an impermeable cap over the treated soils placed in the repository to eliminate any  
11 significant risks to human health or the environment.

12 B. Covenantor desires and intends that in order to protect the  
13 present and future public health and safety, the Repository Area shall be used in  
14 such a manner as to avoid potential harm to persons or property which may result  
15 from the treated soils which have been deposited within the Repository Area.

## 17 ARTICLE I

### 18 GENERAL PROVISIONS

19 1.01 Provisions to Run With the Land. This Covenant sets forth  
20 protective provisions, covenants, conditions and restrictions (collectively referred to  
21 as "Restrictions"), upon and subject to which the Property and every portion thereof  
22 shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered,  
23 and/or conveyed. Each and all of the Restrictions shall run with the land, and pass  
24 with any portion of the Property which includes the Repository Area, and shall, apply  
25 to, inure to the benefit of and bind the respective successors in interest thereof,  
26 provided that this Covenant shall not encumber any adjacent property. Each and all  
27 of the Restrictions are for the benefit of and enforceable by the Department.  
28

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property which includes the Repository Area, shall be deemed by their purchase, leasing, or possession of such Property which includes the Repository Area, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners, and Occupants of any portion of the Property which includes the Repository Area; and that their interest in any portion of the Property which includes the Repository Area, shall be subject to the Restrictions contained herein.

1.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds, easements, licenses, and leases of any portion of the Property which includes the Repository Area.

## ARTICLE II

### DEFINITIONS

2.01 Department. "Department" shall mean the State of California, Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property which includes the Repository Area.

2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property which includes the Repository Area.

1                   2.04 Owner or Owners. "Owner" or "Owners" shall mean the  
2   Covenantor and/or its successors in interest, including heirs, and assigns, who hold  
3   title to all or any portion of the Property which includes the Repository Area.  
4

5                                   **ARTICLE III**  
6                   **DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY**

7                   3.01 Restrictions on Development and Use. Covenantor promises to  
8   restrict the use of any portion of the Property which includes the Repository Area as  
9   follows:

- 10                           a.    The Repository Area shall be covered with the Cap.  
11                           b.    No grading or excavation of the Repository Area that  
12   would permanently expose treated soils shall be permitted; provided, however, that  
13   the foregoing shall not prohibit grading or excavation of the Cap in a manner which  
14   does not disturb any treated soils buried in the Repository Area if the prior written  
15   permission of the Department is first obtained.  
16                           c.    The Repository Area shall be posted with a sign in English  
17   and Spanish stating that no grading, excavation, or building activities on the Cap or  
18   within ten (10) feet of the perimeter of the Cap are allowed without written  
19   permission of the Department.  
20                           d.    Any treated soils brought to the surface by grading,  
21   excavation, trenching, or backfilling shall be managed in accordance with applicable  
22   provisions of state and federal law.  
23                           e.    The Owner shall notify the Department of each of the  
24   following: (1) the type, cause, location and date of any disturbance to the Cap  
25   which, unless immediately repaired, will materially affect the ability of the Cap to  
26   contain subsurface treated soils beneath the Repository Area; and (2) the type and  
27   date of repair of such disturbance. Notification to the Department shall be made by  
28   registered mail at least five (5) working days prior to any planned repair of the Cap.

1 Notification to the Department shall be made by registered mail within five (5)  
2 working days of the discovery of Cap disturbance and the completion of repairs.

3 f. The Covenantor agrees that the Department shall have  
4 access to the Repository Area for the purposes of inspection, surveillance, or  
5 monitoring, as provided for in Chapters 6.5 and 6.8 of Division 20 of the Health and  
6 Safety Code.

7 g. No day care facilities for children or senior citizens,  
8 residences for human habitation, schools for persons under 18 years of age or  
9 hospitals shall be permitted to be constructed on any portion of the Repository Area  
10 and no structures for use by persons, except for structures used solely for the  
11 keeping of materials shall be permitted to be constructed on any portion of the  
12 Repository Area; this provision, however, shall not restrict the use of improvements  
13 on the Repository Area used in conjunction with any use not located on the  
14 Repository Area that would otherwise be prohibited if conducted on the Repository  
15 Area (e.g., a parking lot used in conjunction with a hospital located on the Property).

16 h. Development of portions of the Property containing the  
17 Repository Area for other than industrial or commercial use shall require written  
18 approval by the Department.

19 i. All uses and development of the Property shall preserve the  
20 integrity of the Cap.

21 3.02 Conveyance of Property. The Owner or Owners shall provide a  
22 thirty (30) day advance notice to the Department of any sale, lease, or other  
23 conveyance of any portion of the Property which includes the Repository Area, or an  
24 interest in any portion of the Property which includes the Repository Area, to a third  
25 person. The Department shall not, by reason of the Covenant, have authority to  
26 approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the  
27 Property except as otherwise provided by law or by reason of this Covenant.  
28

1           3.03 Enforcement. Failure of the Owner or Owners to comply with  
2 any of the restrictions set forth in Paragraph 3.01 shall be grounds for the  
3 Department to require that the Owner or Owners modify or remove any  
4 Improvements constructed in violation of that paragraph. Violation of the Covenant  
5 shall be grounds for the Department to file civil and criminal actions against the  
6 Owner or Owners as provided by law.

7           3.04 Notice in Agreements. All Owners and Occupants shall execute a  
8 written instrument which shall accompany all purchase, lease, sublease, or rental  
9 agreements relating to any portion of the Property which includes the Repository  
10 Area. The instrument shall contain the following statements:

11                   "Notice. The land described herein contains a  
12 repository for treated lead-related hazardous  
13 substances which have been physically and  
14 chemically stabilized with silicate based  
15 reagents (the 'Repository Area'). Such  
16 condition renders the land and the Owner,  
17 lessees, or other possessors of the land  
subject to requirements, restrictions,  
provisions and liabilities contained in Chapter  
6.5 and Chapter 6.8 of Division 20 of the  
Health and Safety Code. This statement is  
not a declaration that a hazard exists."

## 18                   ARTICLE IV

### 19                   VARIANCE AND TERMINATION

20           4.01 Variance. Any Owner of the Property or any portion thereof may  
21 apply to the Department for a written variance from the provisions of this Covenant.

22           4.02 Termination. Any Owner of the Property or a portion thereof may  
23 apply to the Department for a termination of the Restrictions as they apply to all or  
24 any portion of the Property.

25           4.03 Term. Unless terminated in accordance with Paragraph 4.02  
26 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

27           4.04 Subdivision. In the event that the Property is subdivided, the  
28 restrictions herein shall apply only to that portion of the Property which includes the

1 Repository Area, except for the restrictions contained in subparagraph 3.01(g),  
2 which shall apply to all portions of the Property.

## 3 4 ARTICLE V

### 5 MISCELLANEOUS

6 5.01 No Dedication Intended. Nothing set forth herein shall be  
7 construed to be a gift or dedication, or offer of a gift or dedication, of the Property or  
8 any portion thereof to the general public or for any purposes whatsoever.

9 5.02 Notices. Whenever any person gives or serves any notice,  
10 demand, or other communication with respect to this Covenant, each such notice,  
11 demand, or other communication shall be in writing and shall be deemed effective (1)  
12 when delivered, if personally delivered to the person being served or to an officer of  
13 a corporate party being served or official of a government agency being served; or  
14 (2) three (3) business days after deposit in the mail if mailed by United States mail,  
15 postage paid, certified, return receipt requested:

16 If to "Covenantor": Shareholder Properties, Ltd.  
17 P. O. Box 2049  
State Line, Nevada 89449

18 With A Copy To: Shareholder Properties, Ltd.  
19 P. O. Box 1926  
Benicia, California 94510

20 If to "Department": Department of Toxic Substances Control  
21 Site Mitigation Branch  
700 Heinz Avenue, Suite 200  
22 Berkeley, California 94710

23 Covenantor, the Department, and each Owner may change their addresses for  
24 notices by recording a modification to this Covenant for such purpose and delivering  
25 notice thereof and a copy of such recorded modification to the Covenantor, the  
26 Department and each Owner in the manner provided in this paragraph.  
27  
28



1 5.03 Partial Invalidity. If any portion of the terms or Restrictions set  
2 forth herein is determined to be invalid for any reason, the remaining portion shall  
3 remain in full force and effect as if such portion had not been included herein.

4 5.04 Article Headings. Headings at the beginning of each numbered  
5 article of this Covenant are solely for the convenience of the parties and are not a  
6 part of the Covenant.

7 5.05 Recordation. This instrument shall be executed by the  
8 Covenantor and by the Regional Administrator of the Region 2, Department of Toxic  
9 Substances Control of the California Environmental Protection Department. This  
10 instrument shall be recorded by the Covenantor in the County of Solano within ten  
11 (10) days of the date of execution.

12 5.06 References. All references to code sections include successor  
13 provisions.

14 IN WITNESS WHEREOF, the undersigned have executed this Covenant  
15 on the 19 day of August, 1994.

16 COVENANTOR:

Department:

17 SHAREHOLDER PROPERTIES  
18 LIMITED, a California  
19 limited partnership

STATE OF CALIFORNIA  
DEPARTMENT OF TOXIC SUBSTANCE  
CONTROL

20 By Dale Stringfellow  
21 Dale Stringfellow  
22 Its General Partner

23 By Barbara J. Cook  
24 Barbara J. Cook, P.E.  
25 Chief, Site Mitigation Branch  
26 Region 2, Department of Toxic  
27 Substances Control  
28

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

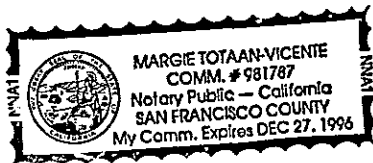
State of California

County of Contra Costa

On August 23, 1994 before me, Margie Totaan-Vicente, Notary Public

personally appeared Dale Stringfellow

☐ personally known to me - **OR** - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Margie Totaan-Vicente  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☒ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)

### DESCRIPTION OF ATTACHED DOCUMENT

Consent & Agreement to Restrict

TITLE OR TYPE OF DOCUMENT

Use of Property  
13

NUMBER OF PAGES

8/19/94

DATE OF DOCUMENT

Barbara J. Cook

SIGNER(S) OTHER THAN NAMED ABOVE

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Alameda

On August 19, 1994 before me, Kathleen J. Solares Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Barbara J. Cook,  
NAME(S) OF SIGNER(S)

☐ personally known to me - **OR** - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



My Comm Exp 11/8/95

WITNESS my hand and official seal.

Kathleen J. Solares  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☒ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

### DESCRIPTION OF ATTACHED DOCUMENT

Covenant & Agreement to  
Restrict Use of Property

TITLE OR TYPE OF DOCUMENT

Repository Area located on Parcel  
2-4 A Benicia, CA

13

NUMBER OF PAGES

8/19/94  
DATE OF DOCUMENT

Dale Stringfellow  
SIGNER(S) OTHER THAN NAMED ABOVE

LEGAL DESCRIPTION OF PARCEL 2-4A

Parcel 2-4A as shown on the parcel map recorded January 9, 1978, in Book 14 of Parcel Maps, at Page 53, Solano County records.

EXHIBIT A

# PARCEL MAP SHOWING PARCEL 2-4A AND REPOSITORY AREA

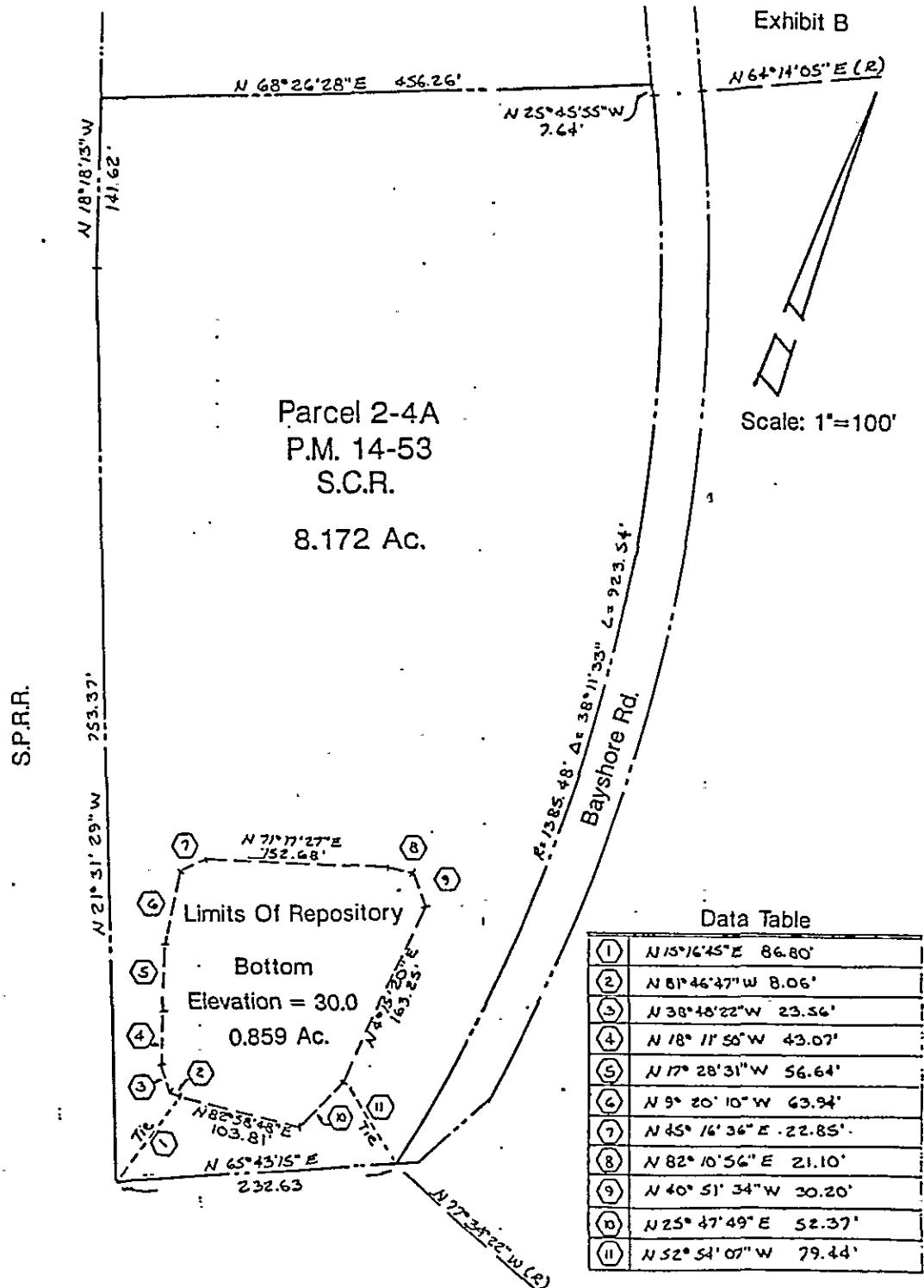


EXHIBIT B

LEGAL DESCRIPTION OF REPOSITORY AREA

A portion of Parcel 2-4A as shown on the Parcel Map recorded January 9, 1978 in Book 14 of Parcel Maps at Page 53, Solano County Records, more particularly described as follows:

Beginning at the most southwesterly corner of said Parcel 2-4A (PM 14-53); thence N15°16'45"E 89.80 feet to the true point of beginning of the Repository; thence N81°46'47"W 8.06 feet; thence N38°48'22"W 23.56 feet; thence N18°11'50"W 43.07 feet; thence N17°28'31"W 56.64 feet; thence N9°20'10"W 63.94 feet; thence N45°16'36"E 22.85 feet; thence N71°17'27"E 152.68 feet; thence N82°10'56"E 21.10 feet; thence S40°51'34"E 30.20 feet; thence S4°15'20"W 163.25 feet; thence S25°47'49"W 52.37 feet; thence S82°58'48"W 103.81 feet to the true point of beginning.

Containing 0.859 acres.

END OF  
DOCUMENT

END OF  
DOCUMENT

EXHIBIT C